IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/09/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRL.O.P.No.26843 of 2003

1. Jabaraj Thiraviam
2. R.M.Vasanthi .. Petitioners

-Vs-

Dr.J.Joel .. Respondent

This criminal original petition is filed under Sec.482 of the Code of Criminal Procedure to call for the records in C.C.No.9 of 2003 on the file of the Judicial Magistrate No.I, Tirunelveli and quash the trial proceedings so far as the petitioners/accused Nos.7 and 18 are concerned.

!For Petitioners : Mr.P.Theogaraj

^For Respondent : Mr.A.N.Thambidurai
Government Advocate(Crl. Side)

:ORDER

The petitioners before this Court have brought forth this petition seeking to quash the proceedings in C.C.No.9/03 pending on the file of the Judicial Magistrate No.I, Tirunelveli.

2. As could be seen from the available materials and the submissions made by the learned Counsel for the petitioner, the respondent/ complainant was the Ex-Principal of Nazareth Margoschis College at Pillainmanai, Tuticorin District, who has lodged a complaint under Sec.500 I.P.C. alleging that the accused arrayed as A-1 to A-25 have defamed him by making libellous allegations and thus, lowered his reputation in the estimation of the society, and therefore, they have got to be dealt with in accordance with law. In the said complaint, the petitioners before this Court have been arrayed as accused Nos.7 and 18 respectively.

3. What are all contended by the learned Counsel for the petitioners before this Court is that the lower Court should not have taken cognizance of the case filed by the complainant in their regard; that there was no publication made at all; that the representations were made by the accused along with others only to the Bishop of Tirunelveli Diocese, who was the higher authority for the institution, and thus, it cannot be termed as defamatory, and hence, the proceedings against them have got to be quashed.

4. The Court, on perusal of the available materials and hearing the rival submissions, is of the considered view that the proceedings now pending

on the file of the learned Judicial Magistrate do not call for quashing.
5. Only on the lodging of the complaint by the respondent/ complainant, a sworn statement was recorded. A copy of the complaint has also been placed in the hands of the Court, wherein it is clearly stated that the petitioners herein along with others have defamed the respondent, the Ex-Principal of Nazareth Margoschis College at Pillainmanai, by making a libellous statement, and he is aggrieved over the same, and hence, he has brought forth the complaint. Now, the only contention put forth by the petitioners' side before this Court is that the Bishop of Tirunelveli Diocese was the appointing authority, and the representations have been made to him, as to the conduct of the complainant as Principal of the said College, and thus, there was no defamation, since it has been made to the authority only, and it was also made in good faith, and therefore, it cannot be one of defamatory in nature, and hence, it has got to be quashed.
6. At this juncture, it has got to be pointed out that so long as the the representations were made by the accused along with 23 others, which is an admitted fact, and according to the complainant, it was defamatory and it has also lowered the reputation in the estimation of the society, and now, according to the petitioners before this Court, the same was also made to the lawful authority and also made in good faith, it is for the petitioners/accused to prove the same. It is true that the initial burden of proving the case is on the complainant. But, once the petitioners/accused come forward to state that they fall under any one of the exceptions of Sec.500 I.P.C., it is for them to prove the same. Though the law does not require the same degree of proof what is expected of the prosecution, it is for the accused to prove the preponderance of probabilities in a case like this. In such circumstances, the available materials would be suffice to proceed with the case.
7. Apart from the above, what are all now stated before this Court is a matter that has to be decided by the Court below only on the evidence and not otherwise. The Court is unable to notice any reason to quash the proceedings pending on the file of the learned Judicial Magistrate No.I, Tirunelveli, against the petitioners, arrayed as A-7 and A18. This criminal original petition is, therefore, dismissed. Consequently, connected Crl.M.P. is also dismissed.

Index: Yes
Internet: Yes

To:

1) The Judicial Magistrate No.I,
Tirunelveli.

2) The Public Prosecutor
High Court, Madras.

nsv/